

ORDINANCE NO. 2145

AN ORDINANCE AUTHORIZING THE CITY OF GARDNER, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,500,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING A MANUFACTURING FACILITY; AND AUTHORIZING EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS (TRADENET PUBLISHING, INC. PROJECT).

WHEREAS, the City of Gardner, Kansas (the "City"), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

WHEREAS, the City has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the state of Kansas that the City issue its industrial revenue bonds in two series in the aggregate principal amount of \$3,500,000 (the "Bonds"), for the purpose of paying the costs of acquiring, constructing and improving a certain manufacturing facility (the "Property") as more fully described in the Lease hereinafter authorized for lease by the City to 1200 Energy Center, LLC, a Kansas limited liability company (the "Lessee"); and

WHEREAS, the payment of the Bonds will be guaranteed for the benefit of the owner of the Bonds by the Lessee, by TradeNet Publishing, Inc., a Kansas corporation ("TradeNet"), and by Thomas D. Mertz; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) an Escrow Agreement dated as of April 1, 2005, among the City, the Lessee, GE Capital Public Finance, Inc., as bondholder ("Bondholder") and as collateral agent ("Collateral Agent") and Marshall & Ilsley Trust Company, a national association, Minneapolis, Minnesota, as Escrow Agent, prescribing the terms and conditions of disbursing and investing the Bond proceeds; (ii) a Lease Agreement dated as of April 1, 2005 (the "Lease"), among the City, the Lessee, Bondholder and Collateral Agent under which the City shall cause the Property to be acquired, constructed and improved and leased to the Lessee in consideration of Payments provided for therein; (iii) Tax Regulatory Agreement and Arbitrage Certificate dated as of April 1, 2005, among the City, Bondholder, the Lessee and TradeNet under which certain representations, agreements and covenants are made relating to the portion of the Bonds that are designated as exempt from federal income taxation; and (iv) a Payment in Lieu of Tax Agreement dated as of April 1, 2005 (the "PILOT Agreement"), among the Lessee, TradeNet and the City under which the City agrees to apply for an effective property tax abatement for a portion of the Property being financed by the Bonds and the Lessee and TradeNet agree to make certain payments in lieu of taxation and meet certain performance standards to retain the property tax abatement (collectively, the "Bond Documents");

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS AS FOLLOWS:

Section 1. Authority to Cause the Property to be Purchased, Constructed and Improved. The City is hereby authorized to cause the Property to be acquired, constructed and improved all in the manner and as more particularly described in the Bond Documents hereinafter authorized.

Section 2. Authorization of, Security for and Approval of Issuance of the Bonds. The City is hereby authorized and directed to issue the Bonds in the aggregate principal amount of \$3,500,000 for the purpose of providing funds to pay the costs of acquiring, constructing and improving the Property. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms and in such series, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Lease. The Bonds shall be special limited obligations of the City payable solely from the Payments (as defined in the Lease) to be made by the Lessee under the Lease and secured by a lien on the Property. The Bonds shall not be general obligations of the City, nor constitute a pledge of the faith and credit of the City and shall not be payable in any manner by taxation. The issuance of the Bonds pursuant to the Bond Documents is hereby approved by the Governing Body of the City.

Section 3. Execution of Bonds and Bond Documents. The Mayor or acting Mayor of the City is hereby authorized and directed to execute the Bonds and deliver them to the Bondholder in the manner provided in the Bond Documents. The Mayor or acting Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the City, in substantially the forms on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor or acting Mayor may approve, which approval shall be evidenced by his or her execution thereof, and to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the City is hereby authorized and directed to attest the execution of the Bonds and the Bond Documents and execute or attest such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the City's official seal.

Section 4. Tax Exemption; Payment in Lieu of Taxes. The City hereby determines that pursuant to the provisions of K.S.A. 79-201a *Second*, the Improvements as defined in the Lease purchased or constructed with the proceeds of the Bonds are eligible for exemption from ad valorem property taxes for ten years commencing the year following the year in which the Bonds are issued, provided proper application is made therefor. The City further determines that the Improvements shall be exempt from such taxes for 10 years, commencing in the year after the Bonds are issued, subject to an annual payment in lieu of taxes and other terms and conditions of the PILOT Agreement. In making such determination the Governing Body of the City has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. The Lessee is responsible for preparing such application and providing the same to the City

for its review and submission.

Section 5. Pledge of the Property and Payments. The City hereby pledges the Property and Payments designated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds have been paid in accordance with the provisions of the Lease.

Section 6. Election Under Section 144(a)(4) of the Internal Revenue Code. The City hereby elects that Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, shall apply to the portion of the Bonds identified as “tax-exempt” pursuant to the Bond Documents, and the Mayor or City Clerk is hereby authorized and directed to take such other action as may be necessary to make effective the election.

Section 7. Further Authority. The officials, officers, agents and employees of the City are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the City with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this ordinance and in the Bond Documents.

Section 8. Effective Date. This ordinance shall take effect from and after its final passage by the Governing Body of the City, signature by the Mayor and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Gardner, Kansas, and signed by the Mayor on April 18, 2005.

CITY OF GARDNER, KANSAS

[SEAL]

Mayor

Attest:

City Clerk